International Criminal Court ICC-ASP/1/L.1

Assembly of States Parties

Distr.: Limited
28 August 2002
English
Original: French

First session
New York
3-10 September 2002

Election of judges

Proposal submitted by France

1. Insert the following text in document PCNICC/2002/2, Annex XII, following paragraph 20:

For the purposes of the first election of the judges of the International Criminal Court the election procedure will be as follows:

1. The persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting. However, no more than 13 candidates from list A and no more than 9 candidates from list B shall be considered elected. **In the event that fewer than 9 candidates from list A or fewer than 5 candidates from list B are among these 18 candidates, only the 13 candidates from list A or the 9 candidates from list B having obtained the highest number of votes shall be considered elected. The remaining seats shall be assigned to the candidates from the other list having obtained the requisite majority.**

2. States Parties shall, in the election of judges, take into account the need for the representation of the principal legal systems of the world. They shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women and children.

3. **In the first ballot, each State Party shall cast 18 votes which shall be distributed between the list of female candidates and the list of male candidates. The proportion of votes allocated to each list shall depend on the number of names on the list in relation to the total number of candidates. However**, each State Party shall vote for at least six candidates from each gender. If the number of candidates from one gender is less than eight, the minimum voting requirement for that gender shall be equal to two less than the number of candidates **on that list**.

If there are still seats to be filled, a second ballot shall be held according to the modalities specified in paragraph 4. If among those elected, 13 are

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on list A or 9 are on list B, the next ballot or ballots shall concern only the candidates on the list for which the minimum quota has not been attained.

4. If, after the first ballot, fewer than 18 candidates are elected, the maximum number of votes by a State Party shall be reduced, for each subsequent ballot, by subtracting the number of elected candidates.

5. **For the purposes of the second ballot, each regional group shall be allocated a minimum voting quota as follows:**

African group: 3

Asian group: 2

Eastern European group: 2

Latin American and Caribbean group: 3

Western European and Others group: 3

minus the number of candidates from each regional group elected in the first ballot. If the number of candidates from one regional group is not at least one more **than the respective minimum quota, reduced, if necessary, as provided for in the preceding paragraph,** the voting quota shall then be the number of candidates from that region minus one.

If the number of seats remaining to be filled does not permit the application of the quotas, thus defined, then all the minimum quotas shall be reduced.

6. **Starting with the third ballot, a minimum voting quota shall be set for each of the lists as follows:**

list A: 9

list B: 5

minus the number of candidates from each list already elected in the preceding ballots. If for either list the adjusted quota is less than or equal to 0, the minimum voting quota shall cease to apply to that list. This quota shall be adjusted following each ballot according to the number of candidates elected.

As many ballots shall be held as are needed to fill the 18 seats.

Once 13 candidates, at most, from list A or 9 candidates, at most, from list B are elected and if there are still vacancies to be filled, subsequent ballots shall concern only the candidates from the list for which the minimum quota has not been attained.

7. Only ballot papers observing the aforementioned requirements shall be counted. **Any ballot paper that does not observe the voting requirements set out in the preceding paragraphs shall be invalid.**

8. Ballot papers shall be organized in a manner facilitating such an election process and voting requirements and any adjustments must be clearly indicated. Clear instructions and sufficient time shall be given for each ballot.

9. The President of the Assembly of States Parties shall be responsible for the election procedure, including the determination or adjustment of the requirements set forth above.

2. The first paragraph of paragraph 3 should be read with the following understanding:

"The numbers appearing in the first paragraph of paragraph 3 are only for the purpose of the first election of the judges of the International Criminal Court, without prejudice whatsoever to subsequent elections. These proportions shall be reconsidered with regard to the composition of the Assembly of States Parties before each election."

Annex

1. This proposal is based on the proposal submitted as a working paper for the Assembly of States Parties by a group of delegations on 11 July (PCNICC/2002/WGASP-PD/DP.8).

2. The principal difference between it and the initial document is that it takes into account the criteria of article 36, one after the other. The purpose of this change is to achieve a procedure that is less drawn-out because it is simpler for States Parties, since they will have to take into account only one criterion in each ballot. Logically, this should result in fewer invalid ballot papers and fewer objections from States Parties.

3. Moreover, this proposal seeks to ensure a more balanced representation of the genders, by introducing a minimum voting requirement that is proportional to the number of candidates. Just as a revision of the minimum voting requirements for regional groups is provided for, according to changes in the composition of the Assembly of States Parties, so it seemed equitable to provide for a comparable, although adjusted, mechanism for the criterion of representation between men and women.

4. This system takes better into account the criteria of paragraph 8 of article 36 of the Statute, while at the same time giving greater freedom of choice to States Parties. Indeed, in the initial system, the composition of the list of candidates might "dictate" the choice of States Parties, which would then have led to the automatic election of certain candidates. For example, that might happen if there were few female candidates and they were all concentrated in only one or two regional groups.

5. This rigidity of voting and the risk of an automatic majority had prompted several delegations to request a "right of partial abstention" for States Parties. This mechanism, provided for in paragraph 7 of the working paper, aroused strong objections from other delegations which considered that it might have the effect undermining the "minimum voting requirements".

6. By avoiding, save in very exceptional cases, the emergence of an automatic majority due to the application of minimum voting requirements, the revised proposal would make it possible to do away with the "right of partial abstention".

7. Finally, the revised proposal makes a distinction between the results quotas fixed by article 36, paragraph 5 of the Statute and the criteria of article 36, paragraph 8. The results quotas (distribution between lists A and B) are taken into consideration in the first and second ballots at the time of counting: there is no need to impose voting requirements concerning the lists right away, starting with the first ballot, since they have no automatic effect on the final result. However, in order to guarantee that the final result will be consistent with the Statute, voting requirements concerning these lists are imposed starting with the third ballot, if it seems that the minimum quotas set by the Statute have not yet been attained.

Description of the mechanism

1. First ballot. Equitable representation between men and women

8. States shall vote for 18 candidates, distributed between the list of male candidates and the list of female candidates. The proportion of votes assigned to each list is based on the number of names on the list in relation to the total number of candidates. However, a minimum number of votes per gender is provided for (six), unless the number of candidates for either gender is less than eight, in which case the number of votes for the list in question is equal to the number of candidates minus two.

- *Thus if the number of female candidates is equal to the number of male candidates, each State will have to vote for nine names on each list. If there are five female candidates and 40 male candidates each State party will have to vote for three women and 15 men.*

9. Candidates having obtained a two-thirds majority of the number of States present and voting shall be elected.

10. If more than 18 candidates obtain the required majority, the 18 who obtain the greatest number of votes shall be elected. However, the number of candidates elected cannot exceed 13 from list A and 9 for list B, by applying the provisions of paragraph 5 of article 36 of the Statute.

- *A candidate who obtains the required majority but who is 14th on list A cannot be elected. In that case, it would be necessary to take an additional candidate from list B (if the number of candidates from list B having obtained the required majority so permits). If not, another ballot shall be held only on the candidates on list B.*

11. If there are still vacancies to be filled, a second ballot will be organized according to the modalities stated in section 2 below. If, among those elected, 13 are on list A or 9 are on list B, any subsequent ballots shall be held only on the candidates of the list for which the minimum quota has not been attained.

2. Second ballot: equitable distribution among regional groups

12. Each regional group shall be allocated a minimum quota of votes as follows:

African group: 3

Asian group: 2

Eastern European group: 2

Latin American and Caribbean group: 3

Western European and Others group: 3

13. This number shall be reduced by the number of candidates from each regional group elected in the first ballot. It shall also be reduced by one if the number of candidates in any regional group is not greater than the minimum number of votes for that regional group after deduction of the candidates elected in the first ballot. If the adjusted quota is less than or equal to 0 for any regional group, the minimum quota of votes shall not apply for that group.

- *If a regional group has a minimum voting quota of three and two candidates are elected in the first ballot, its voting quota will be one in the second ballot, provided that there is at least one candidate remaining to be elected for that group.*

14. If the number of vacancies to be filled does not allow for the application of the quotas so defined, all minimum quotas shall therefore be reduced.

- *If only two candidates remain to be elected in the second ballot and the application of minimum voting quotas would require voting for one candidate from the Western European and other group, one from the African group and one from the Latin American and Caribbean group, States parties will have to vote only for candidates from those three regional groups without any regional voting quota. For instance, one State could vote for two candidates from the Latin American and Caribbean group, or for one candidate from the Western European and others group and one from the African group. However, it could not vote for a candidate from the Eastern European group or for one from the Asian group.*

15. Each State must cast a number of votes equal to the number of seats that have yet to be filled. If, following the second ballot, the number of candidates having obtained the requisite majority is greater than the number of seats to be filled, those candidates having obtained the highest number of votes in the second ballot shall be elected, until all the seats are filled. However, the number of persons elected cannot exceed 13 from list A and 9 from list B, in application of the provisions of paragraph 5 of article 36 of the Statute.

- *Example: If there remain 10 seats to be filled and, 12 candidates obtain the requisite majority in the second ballot, only 10 will be elected, in principle, in the order of the number of votes received, until the maximum quota is attained for one of the lists (13 for list A and 9 for list B). If there are still any vacancies remaining, they will be filled by candidates from the other list.*

16. If there are still seats to be filled, following the second ballot, subsequent votes will be held in accordance with the provisions of section 3 below. If, among those elected, 13 are from list A or 9 from list B, the subsequent ballots will concern only candidates from the list for which the minimum quota has not been attained.

3. Observing the quotas for lists A and B

17. Starting with the third ballot, a minimum voting quota shall be set for each list as follows:

List A: 9

List B: 5

minus the number of candidates from each list already elected in the previous ballots. If for either list the adjusted quota is less than or equal to 0, the minimum voting quota ceases to apply for that list. This quota is adjusted following each ballot, according to the number of candidates elected.

18. There shall be as many ballots as is needed in order to fill the 18 seats. At each ballot, States shall have as many votes as the number of seats that remain to be filled.

19. Once 13 candidates, at most, from list A or 9 candidates, at most, from list B are elected, and if there are still vacancies to be filled, subsequent ballots shall concern only the candidates on the list for which the minimum quota has not been attained.

4. **Any ballot paper that does not observe the minimum voting quotas set forth in the preceding sections shall be invalid.**

International Criminal Court ICC-ASP/1/L.2

Assembly of States Parties

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3 September 2002

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New York
3-10 September 2002

Election of judges

Proposal submitted by Brazil, Chile, Costa Rica, Ecuador, Mexico, Nauru, Nigeria, Mongolia, Paraguay, Peru, Republic of Korea, Trinidad and Tobago and Uruguay

The Assembly of States Parties,

Bearing in mind the provisions of the Rome Statute of the International Criminal Court,

Mindful of the rules of Procedure of the Assembly of State Parties,

Convinced of the need to fully implement to provisions of article 36 of the Rome Statute,

Approves the following procedure for the election of the judges of the International Criminal Court:

1. The persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting. However, no more than 13 candidates from list A and no more than 9 candidates from list B shall be considered elected.

2 States Parties shall, in the election of judges, take into account the need for the representation of the principal legal systems of the world, equitable geographical representation and a fair representation of female and male judges. They shall take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women and children.

3. Each State Party shall vote for a maximum number of 18 candidates, whereby it shall observe the following minimum voting requirements:

(a) Each State Party shall vote for at least 9 candidates from list A and at least 5 candidates from list B;

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(b) Each State Party shall vote for at least:

- 3 candidates from the Group of African States,
- 3 candidates from the Group of Latin American and Caribbean States,
- 3 candidates from the Group of Western European and other States,
- 3 candidates from the Group of Asian States, and
- 3 candidates from the Group of Eastern European States.

For the purposes of the first election and on an exceptional basis, if the number of States Parties of any given regional group is less than three eighteenths of the total number of States Parties to the Rome Statute at that moment, the minimum voting requirement for that group shall be adjusted by subtracting 1.

If the number of candidates from a regional group is not at least one more than the respective minimum voting requirement, this requirement shall be equal to one less than the number of candidates from that region;

(c) Each State Party shall vote for at least six candidates from each gender. If the number of candidates from one gender is less than eight, the minimum voting requirement for that gender shall be equal to two less than the number of candidates for that gender.

4. If, after the first ballot, fewer than 18 candidates are elected, the maximum number of votes by a State Party, which is 18 for the first ballot, shall be reduced, for each subsequent ballot, by subtracting the number of elected candidates.

5. The minimum voting requirements as reflected in paragraph 3 shall apply, mutatis mutandis, for subsequent elections.

6. If, after the first ballot, fewer than 18 candidates are elected, the following adjustments shall apply to subsequent ballots:

(a) The minimum voting requirement referred to in lists A and B shall be adjusted, list by list, by subtracting the number of elected candidates;

(b) The minimum regional voting requirement shall be adjusted, group by group, by subtracting the number of elected candidates;

(c) The minimum gender voting requirement shall be adjusted, gender by gender, by subtracting the number of elected candidates.

7. Each minimum voting requirement shall be adjusted until that requirement can no longer be met, whereupon the use of that requirement shall be discontinued. If an adjusted voting requirement can be met individually, but not jointly, the use of all regional and gender voting requirements shall be discontinued. If following four ballots 18 judges still have not yet been elected, these minimum voting requirements shall be discontinued.

8. Only ballot papers observing the minimum voting requirements shall be valid. If a State Party fulfils the minimum requirements using less than the maximum number of votes allowed for that ballot, it may abstain in voting for the remaining candidates.

9. The President of the Assembly of States Parties shall be responsible for the election procedure, including the determination, adjustment or discontinuation of the minimum voting requirements.

10. Ballot papers shall be organized in a manner facilitating such an election process. The minimum voting requirements, adjusted requirements and the discontinuation of any requirements shall be clearly indicated on the ballot papers. Before the day of the election, the President shall distribute to all States Parties copies of the instructions and samples of the ballot papers. On the day of the election, clear instructions and sufficient time shall be given for each ballot. In each ballot, before the voting process is concluded, the President shall repeat the instructions and the minimum requirements to allow each delegation to verify that its vote meets those requirements.

International Criminal Court ICC-ASP/1/L.3

Assembly of States Parties

Distr.: Limited
4 September 2002

Original: English

First session
New York
3-10 September 2002

Draft report of the Assembly of States Parties to the Rome Statute of the International Criminal Court

Introduction

1. In accordance with a decision of the Preparatory Commission at its 41st meeting, on 8 July 2002 (PCNICC/2002/2, para. 17), the first session of the Assembly of States Parties to the Rome Statute of the International Criminal Court was held at United Nations Headquarters from 3 to 10 September 2002.

2. Pursuant to General Assembly resolution 56/85 of 12 December 2001, the Secretary-General of the United Nations invited all States Parties to the Rome Statute to participate in the meeting. Other States which had signed the Statute or the Final Act were also invited to participate in the meeting as observers.

3. Also invited, pursuant to the same General Assembly resolution, as observers to the meeting of the Assembly, were representatives of intergovernmental organizations and other entities that have received a standing invitation from the General Assembly pursuant to its relevant resolutions[1] as well as interested regional intergovernmental organizations and other international bodies invited to attend the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, June/July 1998) or accredited to the Preparatory Commission for the International Criminal Court.

4. Further pursuant to resolution 56/85, non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission for the International Criminal Court or having consultative status with the Economic and Social Council of the United Nations whose activities are relevant to the activities of the Court were invited to participate in the work of the Assembly of States Parties in accordance with agreed rules.

5. In accordance with rule 94 of the Rules of Procedure of the Assembly of States Parties, the following States were invited to be present during the work of the Assembly: Bhutan, Cook Islands, Democratic People's Republic of Korea, East Timor, Equatorial Guinea, Grenada, Kiribati, Lao People's Democratic Republic, Lebanon, Malaysia, Maldives, Mauritania, Micronesia (Federated States of),

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Myanmar, Niue, Palau, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Somalia, Suriname, Swaziland, Tonga, Turkmenistan, Tuvalu and Vanuatu.

6. On behalf of the Secretary-General, the session was opened by the Under-Secretary-General for Legal Affairs, the Legal Counsel, Mr. Hans Corell.

7. At its 1st meeting, on 3 September 2002, the Assembly elected its Bureau as follows:

President:
H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan)

Vice-Presidents:
Mr. Allieu Ibrahim Kanu (Sierra Leone)
Mr. Felipe Paolillo (Uruguay)

Other members of the Bureau:
Austria, Croatia, Cyprus, Democratic Republic of the Congo, Ecuador, Gabon, Germany, Mongolia, Namibia, Netherlands, New Zealand, Nigeria, Norway, Peru, Romania, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland and Yugoslavia

8. At the same meeting, in accordance with the prior understanding on the composition of the Bureau (PCNICC/2002/2, para. 11), it was decided that Mr. Alexander Marschik (Austria) would act as Rapporteur.

9. Also at the 1st meeting, in accordance with rule 25 of the Rules of Procedure of the Assembly of States Parties, the following States were appointed to serve on the Credentials Committee: Benin, Fiji, France, Honduras, Ireland, Paraguay, Slovenia, Uganda and Yugoslavia.

10. The Director of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat, Mr. Václav Mikulka, acted as Secretary of the Assembly. The Codification Division provided the substantive servicing for the Assembly.

11. At the 1st meeting, the Assembly adopted the following agenda (ICC-ASP/1/1):

1. Opening of the session by the Secretary-General.
2. Silent prayer or meditation.
3. Election of the President.
4. Adoption of the agenda.
5. Adoption of the Rules of Procedure of the Assembly of States Parties.
6. Election of two Vice-Presidents and 18 members of the Bureau.
7. Credentials of representatives of States Parties at the first session:
   (a) Appointment of the Credentials Committee;
   (b) Report of the Credentials Committee.
8. Organization of work.
9. Establishment of other subsidiary bodies.

10. Consideration of the report of the Preparatory Commission:

    (a) Rules of Procedure and Evidence;

    (b) Elements of Crimes;

    (c) A relationship agreement between the Court and the United Nations;

    (d) Basic principles governing a headquarters agreement to be negotiated between the Court and the host country;

    (e) Financial regulations and rules;

    (f) An agreement on the privileges and immunities of the Court;

    (g) Any resolution, recommendation or other matters.

11. Adoption of the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors.

12. Adoption of the budget for the first financial period.

13. Adoption of the scale of assessments.

14. Decisions regarding practical arrangements for the transitional period.

15. Appointment of an external auditor.

16. Decisions concerning the next meeting, including dates and venue.

17. Other matters.

12. At the same meeting, the Assembly adopted by consensus the Rules of Procedure of the Assembly of States Parties [(PCNICC/2001/1/Add.4), annexed to the present report as ...]. Bearing in mind that the Rules of Procedure are silent on the extent of the right of observer States referred to in paragraph 1 of article 112 of the Rome Statute to participate in the Assembly, the Assembly decided that such observer States should be allowed to participate in its deliberations but could not participate in the taking of decisions.

13. Also at the 1st meeting, the Assembly adopted the draft recommendation of the Assembly of States Parties concerning seating arrangements for States Parties [(PCNICC/2002/2, annex II), annexed to the present report as ...].

14. At the same meeting, the Assembly decided to meet in plenary sessions and as a Working Group of the Whole and agreed on a programme of work. It reserved time for general statements after the adoption of the reports of the Working Group of the Whole and the Credentials Committee.

Consideration of the report of the Preparatory Commission

15. At the 1st meeting of the Assembly, the report of the Preparatory Commission for the International Criminal Court, as contained in documents PCNICC/2000/1 and Add.1 and 2, PCNICC/2001/1 and Add.1-4, PCNICC/2002/1 and Add.1 and 2 and PCNICC/2002/2 and Add.1-3, was introduced by the Chairman of the Preparatory Committee, Mr. Philippe Kirsch (Canada). The Chairman also briefed the Assembly

on the progress made by the advance team of experts working to ensure the early and effective establishment of the Court.

16. Also at the 1st meeting, the Assembly adopted by consensus the draft resolution on the establishment of the Committee on Budget and Finance [PCNICC/2001/1, annex I, annexed to the present report as ...].

17. At the same meeting, the Assembly adopted by consensus the draft resolution relating to the procedure for the nomination and election of members of the Committee on Budget and Finance [(PCNICC/2002/2, annex XI), annexed to the present report as ...].

18. At the 2nd meeting, on 3 September 2002, the Assembly adopted by consensus the draft budget for the first financial period of the Court [(PCNICC/2002/2/Add.1), annexed to the present report as ...].

19. At the same meeting, the Assembly also adopted by consensus the following resolutions and decisions related to the budget:

(a) Resolution relating to budget appropriations for the first financial period and financing of appropriations for the first financial period [PCNICC/2002/2, annexed to the present report as ...];

(b) Resolution relating to scales of assessments for the apportionment of the expenses of the International Criminal Court [PCNICC/2002/2, annex V, annexed to the present report as ...];

(c) Resolution on crediting contributions to the United Nations Trust Fund to Support the Establishment of the International Criminal Court [PCNICC/2002/1, annex II, annexed to the present report as ...];

(d) Resolution relating to the Working Capital Fund for the first financial period [PCNICC/2002/2, annex IV, annexed to the present report as ...];

(e) Decision relating to the provision of funds for the Court [PCNICC/2002/2, annex VI, annexed to the present report as ...];

(f) Resolution on relevant criteria for voluntary contributions to the International Criminal Court [PCNICC/2001/1, annex II, annexed to the present report as ...];

(g) Decision relating to interim arrangements for the exercise of authority pending the assumption of office by the Registrar [PCNICC/2002/2, annex VII, annexed to the present report as ...].

20. Also at the same meeting, the Assembly reached an understanding in connection with the decision relating to the provision of funds for the Court for the first financial period (PCNICC/2002/2, annex VI), that the assessments would be determined based on the membership of the Assembly of States Parties at the date of the adoption of the decision, namely 3 September 2002, and that the assessments of States for which the Rome Statute would enter into force after 3 September 2002 would be treated as miscellaneous income.

Adoption of the report of the Working Group of the Whole

21. At its 3rd meeting, on 9 September 2002, the Assembly adopted by consensus the report of the Working Group of the Whole (ICC-ASP/1/C.1/L.2).

Adoption of the report of the Credentials Committee

22. At its ... meeting, on 9 September 2002, the Assembly adopted the report of the Credentials Committee (ICC-ASP/1/...).

General statements and address by the Secretary-General of the United Nations

23. At its 3rd and 4th meetings, on 9 and 10 September 2002, the Assembly heard general statements from ....

24. At the 4th meeting, the Secretary-General of the United Nations addressed the Assembly.

Opening for signature of the Agreement on the Privileges and Immunities of the International Criminal Court

25. The Agreement on the Privileges and Immunities of the International Criminal Court was opened for signature by all States at United Nations Headquarters in New York on 10 September 2002. It will remain open for signature until 30 June 2004.

Next meeting, including the dates and venue

26. At the 3rd meeting, the Assembly decided to convene its next meeting at ... from ... to ... 2003.

Notes

[1] Resolutions 253 (III), 477 (V), 2011 (XX), 3208 (XXIX), 3237 (XXIX), 3369 (XXX), 31/3, 33/18, 35/2, 35/3, 36/4, 42/10, 43/6, 44/6, 45/6, 46/8, 47/4, 48/2, 48/3, 48/4, 48/5, 48/237, 48/265, 49/1, 49/2, 50/2, 51/1, 51/6, 51/204, 52/6, 53/5, 53/6, 53/216, 54/5, 54/10, 54/195, 55/160, 55/161, 56/90, 56/91, 56/92 and decision 56/475.